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STATE FOR PRM AND EAP/MLS

E.O. 12958: N/A

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SUBJECT: SUNSET FOR THE MCCAIN AMENDMENT

REF: REF A: O-I 103/07 REF B: 05 HCMC 074

¶1. This is an action request. See paragraphs 10 and 11.

¶2. Summary: Mission Vietnam supports the reauthorization of the McCain Amendment (ref A). At the same time, the exact reauthorization needs to be handled carefully in order to allow the program to progress and eventually wind down in a manner that is both equitable and in keeping with clear U.S. interests. We therefore propose that there should be a cutoff date for submitting new McCain Amendment applications of June 25, 2008. We chose this date because it fits with the overall Humanitarian Resettlement process and will allow time for all applications received before the cut-off date to be fully processed before the McCain Amendment would expire at the end of FY2009. End summary.

1,000 Cases Still Pending

¶3. Mission Vietnam welcomes the possible reauthorization of the McCain Amendment in the FY 2008 State and Foreign Operations Appropriations Bill. The reauthorization language is contained in Title VI, "Special Authorities" Section 634(f) and amends Section 594(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (enacted as division D of Public Law 108-447; 118 Stat. 3038) by striking 'and 2007' and inserting 'through 2009'. Ref A transmitted this to Mission.

¶4. This measure would keep the McCain Amendment in effect through the current Humanitarian Resettlement (HR) process. If this measure is not passed, the McCain Amendment will expire at the end of this fiscal year, ending the eligibility of more than 1000 individuals who have applied but have not yet been interviewed by US Citizenship and Immigration Services (USCIS). About half of these are eligible for USCIS interview at the moment, but have not been scheduled for interview due to a lack of USCIS adjudicators. Others are still waiting for their cases to be processed prior to reaching the point of a USCIS interview.

¶5. There will be no more USCIS interviews for HR applicants this fiscal year. Anticipating the lapse of the McCain Amendment, the Humanitarian Resettlement Section (HRS) filled as many interview slots as possible during the last circuit ride with pre-HR McCain Amendment applicants. Virtually all of these cases were either interviewed or could not be contacted. HRS gave priority for the remaining slots to HR-HO cases with McCain children that were ready to interview.

¶6. The next USCIS circuit ride is planned for mid-October to mid-December. HRS anticipates that the McCain Amendment will be lapsed at that time so is filling interview slots with cases that do not have McCain add-ons. Presuming that the McCain Amendment is re-authorized, HRS will schedule interview slots for later circuit rides as normal -- generally first in, first

out with expedited treatment for age-out cases. This should take care of overhang McCain-related cases that will develop until the provision is reauthorized. Processing without these appointment considerations is more efficient as it takes extra work to fill interview slots out of turn and USCIS adjudicators can handle 25% more cases per day if McCains are included. Three existing McCain cases contain members in danger of aging out even if the provision is reauthorized: in January, April, and June of 2008 respectively.

¶7. Reauthorization of the McCain Amendment for the proposed period will allow all of those resettled under HR-HO to be joined by their single adult children. If it is not reauthorized, a majority of applicants will not have that opportunity. HR applications will be accepted until June 25, ¶2008. Mission expects that all HR applicants will have been adjudicated by USCIS well before the end of FY 2009 if the current pattern of USCIS circuit rides continues. Thus, there will be no need for another reauthorization.

An Efficient, Humane Sunset

¶8. While Mission believes reauthorizing the McCain Amendment through the end of FY 2009 is in the best interest of U.S. policy and goals, there are multiple reasons why there should be an earlier cut-off date for accepting new applications. First, we note that the end of the HR process will coincide with the end of the Humanitarian Resettlement Section and its processing capabilities as they now exist. Thus, HRS's ability to process new McCain cases after June 2008 will be sharply diminished as it will be focusing on closing existing cases as quickly as possible with a shrinking staff. Second, as noted in Ref B, the GVN expects refugee processing related to the ODP categories to end when Humanitarian Resettlement does. While McCain cases are not mentioned in the Understanding on HR between the two sides, they are dependent solely on one category that HR re-opened.

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Third, it will become increasingly difficult to schedule interviews for McCain applicants as USCIS adjudicates the final HR applicants in early to mid-2009. Lastly, if applications are accepted up to the last day of the life of the program, there will inevitably be a number of people whose applications cannot be processed before the end of the program. While we certainly cannot predict in advance, there could be hundreds of cases that expire without ever being processed to conclusion, leaving us in much the same predicament as we are in today.

¶9. It would be most humane to avoid raising expectations that cannot be met. Therefore Mission believes that the cutoff for receiving new McCain Amendment applications should coincide with the end of the Humanitarian Resettlement application period. Any other close-out date for the McCain applications would cause excessive confusion and hinder our own ability to plan a logical conclusion to the HR program. We therefore recommend June 25, 2008, as the date certain for ending acceptance of new McCain applications.

Action Requests

¶10. Action requested: Mission believes that the McCain Amendment should be expeditiously reauthorized for the period proposed and requests Department support for the reauthorization.

¶11. Action requested: If the McCain Amendment is renewed, that the Department authorize a cutoff date for receiving new McCain Amendment applications that corresponds with the end of the Humanitarian Resettlement Process -- June 25, 2008.

¶12. This message was coordinated with Embassy Hanoi.
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